

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 311

SENATE BILL 1238

AN ACT

AMENDING SECTIONS 43-401, 43-403, 43-404 AND 43-412, ARIZONA REVISED
STATUTES; RELATING TO INCOME TAX WITHHOLDING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-401, Arizona Revised Statutes, is amended to
3 read:

4 43-401. Withholding tax; rates; election by employee

5 A. EXCEPT AS PROVIDED BY SUBSECTION B OF THIS SECTION, every employer
6 at the time of the payment of wages, salary, bonus or other emolument to any
7 employee whose compensation is for services performed within this state shall
8 deduct and retain from the compensation an amount equal to a percentage,
9 determined pursuant to subsection B- C of this section, of the total amount
10 of the federal income tax deducted and withheld by an employer from the total
11 value of such wages, bonus or other emolument of an employee under the
12 provisions of the United States internal revenue code computed without
13 deductions for any amount withheld.

14 B. AN EMPLOYER MAY VOLUNTARILY ELECT TO NOT WITHHOLD TAX DURING
15 DECEMBER BY NOTIFYING:

16 1. THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT.

17 2. THE EMPLOYER'S EMPLOYEES IN WRITING IN A MANNER PRESCRIBED BY THE
18 DEPARTMENT.

19 ~~B- C.~~ C. The percentage deducted and retained under subsection A of this
20 section shall be:

21 1. If the employee's annual compensation is less than fifteen thousand
22 dollars, ten per cent, nineteen per cent, twenty-three per cent, twenty-five
23 per cent, thirty-one per cent or thirty-seven per cent, at the employee's
24 election pursuant to subsection ~~E- F~~ of this section.

25 2. If the employee's annual compensation is fifteen thousand dollars
26 or more, nineteen per cent, twenty-three per cent, twenty-five per cent,
27 thirty-one per cent or thirty-seven per cent, at the employee's election
28 pursuant to subsection ~~E- F~~ of this section.

29 3. Zero per cent at the election of an employee who had no state
30 income tax liability in the prior taxable year and expects to have no state
31 income tax liability for the current taxable year.

32 ~~E- D.~~ D. If the amount collected and payable by the employer to the
33 department in each of the preceding four calendar quarters did not exceed an
34 average of one thousand five hundred dollars, the amount collected shall be
35 paid to the department on or before April 30, July 31, October 31 and January
36 31 for the preceding calendar quarter. If such amount exceeded one thousand
37 five hundred dollars in each of the preceding four calendar quarters, the
38 employer shall pay to the department the amount the employer deducts and
39 retains pursuant to this section at the same time as the employer is required
40 to make deposits of federal tax pursuant to section 6302 of the internal
41 revenue code. On or before April 30, July 31, October 31 and January 31 each
42 year the employer shall reconcile the amounts payable during the preceding
43 calendar quarter in a manner prescribed by the department. For taxable years
44 or reporting periods that begin from and after December 31, 1997, the
45 department by rule may allow and determine which employers qualify for annual

1 payments of withholding taxes, with an annual report by the employer pursuant
2 to section 43-412, subsection B, if the qualifying employer has established
3 sufficient payment history to indicate that the employer is current and in
4 good standing pursuant to standards established by rule. For any business
5 which has not had a withholding certificate for the four preceding
6 consecutive quarters, the quarterly average shall be computed in a manner
7 prescribed by the department.

8 ~~D.~~ E. If an employer fails to make a timely monthly payment because
9 prior to that reporting period it reported on a quarterly basis instead of on
10 a monthly basis, the department shall notify the employer that it is out of
11 compliance with this section. Notwithstanding section 42-1125, the
12 department shall not assess a penalty against an employer for failing to make
13 a timely monthly payment if the employer had filed and remitted all taxes due
14 on a quarterly basis and brings all filings and payments into current
15 compliance within thirty days after being notified by the department.

16 ~~E.~~ F. Each employee shall elect the amount authorized by subsection
17 B- C of this section to be withheld for application toward the employee's
18 state income tax liability. The election provided under this subsection
19 shall be exercised by each employee, in writing on a form prescribed by the
20 department. The election shall be made within five days of employment. Each
21 employer shall notify the employees of the election made available under this
22 subsection and shall have election forms available at all times. Each form
23 shall be completed in triplicate, with one copy each for the department, the
24 employer and the employee. The employer shall file a copy of each completed
25 form with the department. Any employee failing to complete an election form
26 as prescribed shall be deemed to have elected the smallest applicable
27 withholding percentage.

28 Sec. 2. Section 43-403, Arizona Revised Statutes, is amended to read:

29 43-403. Employment excluded from withholding

30 A. No amount shall be deducted or retained from:

31 1. Wages or salary paid to an employee of a common carrier when such
32 employee is a nonresident of this state as defined in section 43-104 and
33 regularly performs services both within and without this state.

34 2. Wages paid for domestic service in a private home.

35 3. Wages paid for casual labor not in the course of the employer's
36 trade or business.

37 4. Wages paid to part-time or seasonal employees whose services to the
38 employer consist solely of labor in connection with the planting,
39 cultivating, harvesting or field packing of seasonal agricultural crops,
40 except such employees whose principal duties are operating any
41 mechanically-driven device in such operations.

42 5. Wages or salary paid to a nonresident of this state who is:

43 (a) An employee of an individual, fiduciary, partnership, corporation
44 or limited liability company having property, payroll and sales in this

1 state, or of a related entity having more than fifty per cent direct or
2 indirect common ownership.

3 (b) Physically present in this state for less than sixty days in a
4 calendar year for the purpose of performing a service that will benefit the
5 employer or the related entity. For purposes of determining the number of
6 days of service in this state, days spent in the following activities are not
7 included:

8 (i) In transit.

9 (ii) Engaging in personal activities.

10 (iii) Participating in training or professional development activities
11 or attending meetings that are not directly connected to the Arizona
12 operations of the employer or the related entity.

13 B. In addition to the exemptions from the withholding provisions
14 contained in subsection A of this section, because of the temporary nature of
15 such employment, no amount shall be deducted or retained from wages paid to a
16 nonresident of this state engaged in any phase of motion picture production
17 when, prior to the time of payment of such wages, an application is made by
18 the employer to the department, on forms prescribed by the department, for an
19 exemption from the withholding provisions of this section and the department
20 determines that the nonresident would be allowed a credit under section
21 43-1096 against all of the taxes upon such wages imposed by this chapter.

22 C. Subsection A, paragraph 5 of this section does not apply to a
23 nonresident employee who is in this state solely for athletic or
24 entertainment purposes.

25 D. Notwithstanding subsection A, paragraph 5 of this section:

26 1. The nonresident employee may elect to have withholding deducted in
27 the manner prescribed by section 43-401, subsection E- F and the employer
28 shall withhold tax pursuant to that election.

29 2. The employer may elect to withhold tax from the nonresident
30 employee before the sixty day limitation has elapsed.

31 Sec. 3. Section 43-404, Arizona Revised Statutes, is amended to read:

32 43-404. Extension of withholding to military retirement
33 pensions and to other annuities; definition

34 A. For the purposes of this title, any payment of an amount as retired
35 or retainer pay for service in the military or naval forces of the United
36 States, or payments received under the United States civil service retirement
37 system from the United States government service retirement and disability
38 fund, if at the time the payment is made a request by the individual that
39 such pay be subject to withholding under this section is in effect, shall be
40 treated as if it were a payment of wages by an employer to an employee for a
41 payroll period. In addition, a payment of any other annuity to an
42 individual, if at the time the payment is made a request by the individual
43 that such annuity be subject to withholding under this section is in effect,
44 shall be treated as if it were a payment of wages by an employer to an
45 employee for a payroll period.

1 B. A request that retired or retainer pay or an annuity be subject to
2 withholding under this section shall be made by the payee in writing to the
3 person making the annuity payments and shall be accompanied by a form,
4 prescribed by the department, executed in accordance with the provisions of
5 section 43-401, subsection E- F. Such a request may be terminated by
6 furnishing to the person making the payment a written statement of
7 termination.

8 C. For purposes of this section, "annuity" means any amount paid to an
9 individual as a pension or annuity, but only to the extent that the amount is
10 includible in the Arizona gross income of such individual.

11 Sec. 4. Section 43-412, Arizona Revised Statutes, is amended to read:

12 43-412. Returns of withholding to be filed with department

13 A. Every employer at the time of filing a reconciliation pursuant to
14 section 43-401, subsection E- D shall deliver to the department a return in
15 the form prescribed by the department showing the total amount of wages,
16 salaries, bonuses or other emoluments paid to employees, the amount deducted
17 pursuant to this chapter and such other information as the department may
18 require. The employer shall advise the employee of the amount of monies
19 withheld, in accordance with such rules as the department may prescribe,
20 using printed forms furnished by the department for such purposes or, when
21 requested by the employer, upon forms approved by the department.

22 B. The employer shall make an annual return for the calendar year to
23 the department on forms provided by it summarizing the total compensation
24 paid and the tax withheld for each employee during the calendar year and
25 shall file such return with the department on or before February 28 of the
26 year following the year for which the report is made. The department may
27 extend the filing deadline on a showing of good cause by the employer. The
28 return required by this section shall contain or be verified by a written
29 declaration that it is made under the penalties of perjury.

30 Sec. 5. Effective date; adjustment of existing withholding

31 A. This act is effective from and after August 31, 2005.

32 B. Before October 1, 2005 and before July 1 each year thereafter, each
33 employer who chooses to not withhold tax pursuant to section 43-401,
34 subsection B, Arizona Revised Statutes, as amended by this act shall notify
35 each employee that:

36 1. State income taxes will not be withheld from compensation in
37 December.

38 2. The employee may elect to change the rate of withholding tax
39 prescribed by section 43-401, Arizona Revised Statutes, to compensate for the
40 resulting change in annual withholdings from the employee's compensation.

APPROVED BY THE GOVERNOR MAY 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2005.

Passed the House May 2, 20 05

by the following vote: 37 Ayes,

20 Nays, 3 Not Voting

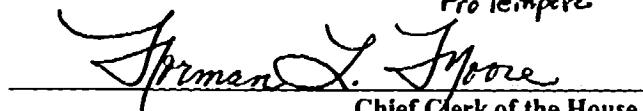
Passed the Senate March 15, 20 05

by the following vote: 17 Ayes,

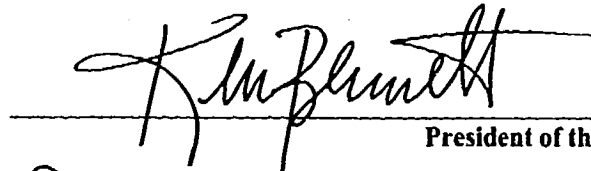
13 Nays, 0 Not Voting



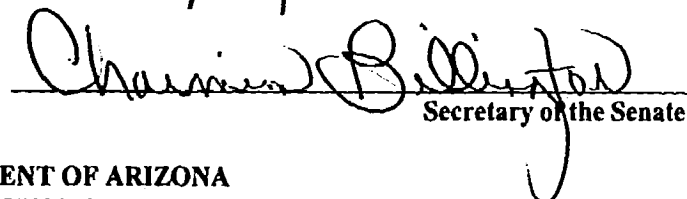
Speaker of the House
Pro Tempore



Chief Clerk of the House



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1238

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 9, 2005,

by the following vote: 19 Ayes,

9 Nays, 2 Not Voting

Klu Bennett
President of the Senate
Charmian Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of May, 2005

at 9:20 o'clock a M.

Wendee Ibarra
Secretary to the Governor

Approved this 20 day of

May, 2005,

at 9³⁰ o'clock A. M.

Jt. Nye
Governor of Arizona

S.B. 1238

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2005,

at 2:03 o'clock P. M.

Janice K. Brewer
Secretary of State